

ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: Price Cap Performance Review for Local
Exchange Carriers
CC Docket No. 94-1

Dear Mr. Caton:

Please find enclosed for filing the original and eleven copies of the Organization for the Protection and Advancement of Small Telephone Companies' comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

Lisa M. Zaina
General Counsel

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)

Price Cap Performance Review)
for Local Exchange Carriers)

CC Docket No. 94-1

**COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES**

**OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990**

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**COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES**

I. INTRODUCTION

On February 16, 1994, the Federal Communications Commission (FCC or Commission) released the text of a Notice of Proposed Rulemaking¹ initiating the fourth year review of the performance of certain local exchange carriers (LECs) under price cap regulation. The Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) hereby submits its comments in response to the Commission's NPRM.

OPASTCO is a national trade association of more than 430 independently owned and operated telephone companies serving rural areas of the United States and Canada. Its members, which include both commercial companies and cooperatives, together serve over two million customers.

¹In the Matter of Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Notice of Proposed Rulemaking, 59 FR 12888 (March 18, 1994). (NPRM)

While none of OPASTCO's member companies have chosen to be regulated in the federal jurisdiction by price caps, they remain vitally interested in certain aspects of the price cap regime -- if for no other reason than to maintain viable rate-of-return alternatives, such as company cost-based tariffs, National Exchange Carrier Association (NECA) average schedules, or various incentive regulation options. Recently, several OPASTCO member companies have purchased, or considered purchasing, certain rural exchanges from price cap LECs. In these instances, the process of obtaining a waiver of the price cap "all or nothing rule" becomes quite relevant to the acquiring, non-price cap companies. For these reasons, OPASTCO makes the following points in its comments: 1) in the case of mergers and acquisitions, case-by-case waivers of the price cap rules are appropriate, and, in a broad sense, do not increase subsidies; 2) traditional rate-of-return regulation has encouraged the pursuit of universal service goals in rural areas; and 3) the possible creation of a "public policy" basket must not affect Part 69 mechanisms for non-price cap companies.

II. IN THE CONTEXT OF MERGERS AND ACQUISITIONS, CASE-BY-CASE WAIVERS OF THE PRICE CAP RULES ARE APPROPRIATE, AND THEY DO NOT INCREASE SUBSIDIES

In its NPRM, the Commission asks whether the current price cap policies associated with exchange sales and swaps are appropriate, and what policies are most consistent with the goals of infrastructure development. Further, the FCC seeks comment on how the process of granting waivers of the price cap rules

regarding mergers and acquisitions could be changed "so as to prevent unreasonable cost shifting. . .".²

OPASTCO believes that the FCC's current price cap waiver policy is entirely appropriate, and has resulted in improving the type and quality of telephone service available to the customers in the exchanges that have been sold. While the Commission appears to focus solely on rates and costs as a measure of customer impact, OPASTCO suggests that the FCC must consider the quality of service being offered, as well. If a set of customers who currently receive multi-party service via step-by-step switches and open wire can instead be afforded single-party service via digital switching through the proper application of interstate support programs, OPASTCO believes it is entirely appropriate to use those programs for that purpose. In the cost/benefit analysis, quality service is surely as important as rate concerns.

OPASTCO believes that the transfer of property from price cap to non-price cap companies does not, as the Commission fears, "artificially increase subsidies."³ This transfer merely shifts the recovery of infrastructure and service costs from one set of contributors (the original LECs' low-cost urban customers) to another (the customers of interstate interexchange carriers).

²NPRM at para. 89.

³NPRM at para. 88.

The current waiver process is perfectly capable of ensuring that any transfers of exchanges make economic sense.

III. TRADITIONAL RATE-OF-RETURN REGULATION HAS ENCOURAGED THE PURSUIT OF UNIVERSAL SERVICE IN RURAL AREAS

While extolling the virtues of price caps, the FCC unfortunately takes the additional step of denigrating traditional rate-of-return regulation:

Such "cost-plus" regulation potentially discourages efficient investment, and encourages cost-shifting when the carrier also participates in more competitive markets. Further, carriers achieving the prescribed rate of return have little profit incentive to introduce new and innovative services.⁴

OPASTCO strongly disagrees with this characterization. Small and rural telephone companies tend to serve high-cost, low-volume areas. Because of their size, these companies can experience some financial volatility in their businesses. For example, losing one large business customer, or installing a single switch, can have profound impacts on the financial profile of the company. Therefore, due to these operating characteristics, the nation's small and rural LECs have chosen to remain under rate-of-return regulation precisely because it allows them to "introduce new and innovative services" to their subscribers at reasonable rates. Therefore, when the FCC examines whether price cap regulation is consistent with the goal of promoting universal service to all geographic areas,⁵ it should bear in mind the

⁴NPRM at para. 11 (footnote deleted).

⁵NPRM at para. 34.

successes of non-price cap carriers in deploying advanced telecommunications infrastructure in rural and remote areas of the country.

The benefits of the current system of rate-of-return regulation, combined with existing support mechanisms contained in Part 69 of the FCC's Rules, is easily demonstrated by examining the level of investment made in rural areas by rate-of-return companies. For example, over 91 percent of the customers served by small and rural LECs that participate in NECA's Traffic Sensitive pool have access to digital switching. Among the same group of companies, 42 percent of central offices have fiber optic access. Eleven percent of the NECA companies have deployed fiber rings with Synchronous Optical Network (SONET) capability.⁶ If the FCC considers the availability of access to modern infrastructure and services part of the provision of universal service, then this type of investment in rural areas has been possible because of mechanisms such as USF and DEM weighting.

IV. THE POSSIBLE CREATION OF A "PUBLIC POLICY" PRICE CAP BASKET MUST NOT AFFECT PART 69 MECHANISMS FOR NON-PRICE CAP COMPANIES

The Commission seeks comment on the existing rules governing the number and composition of price cap baskets, and asks if these rules should be modified in any way. As an example, the FCC specifically refers to the United States Telephone

⁶National Exchange Carrier Association, Building the Telecommunications Infrastructure in Rural America: Achievements Toward the Promise, November 1993.

Association's (USTA) suggestion that a "public policy" basket be created. This basket would include Lifeline Assistance, Universal Service Fund, carrier common line, long term support, and "any other elements established for public policy purposes."⁷

OPASTCO urges the Commission to consider USTA's recommended change solely as an accounting tool for price cap companies. Such a basket should have no effect on the underlying support programs contained in Part 69 of the FCC's Rules. Any substantive discussion of the operation of these programs, and their application to non-price cap LECs, should take place in a proceeding outside of the parameters of this price cap review.

V. CONCLUSION


Because of its member companies' interests in both retaining rate-of-return regulation and acquiring rural exchanges from price cap LECs, OPASTCO respectfully submits that: 1) in the case of mergers and acquisitions, case-by-case waivers of the price cap rules are appropriate, and, in a broad sense, do not increase subsidies; 2) traditional rate-of-return regulation has

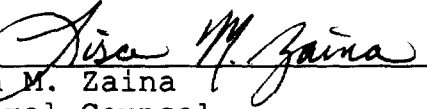
⁷NPRM at para. 38, fn 49.

encouraged the pursuit of universal service goals in rural areas;
and 3) the possible creation of a "public policy" basket must not
affect Part 69 mechanisms for non-price cap companies.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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OF SMALL TELEPHONE COMPANIES**

By: 
Matthew L. Bosch
Manager - Regulatory and
Legislative Affairs

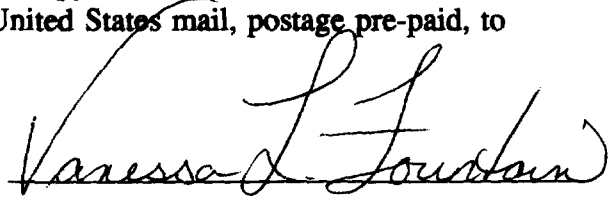
By: 
Lisa M. Zaina
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May 9, 1994

CERTIFICATE OF SERVICE

I, Vanessa L. Fountain, hereby certify that a copy of OPASTCO's comments was sent on this, the 9th day of May, 1994, by first class, United States mail, postage pre-paid, to those listed below.

A handwritten signature in cursive script that reads "Vanessa L. Fountain". The signature is written in dark ink and is positioned above the printed name.

Vanessa L. Fountain

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